

Billboard Vegetation Appeal Procedure

Construction Permit Manual - Procedure 1512.31

An applicant who has had their application to trim or remove vegetation denied, modified or limited or is required to provide mitigation for the trimming or removal of vegetation or who has been notified by the department that they have trimmed or removed vegetation beyond the scope of their permit may file an appeal with the department requesting reconsideration of the department's decision or findings.

I. Responsibilities

Applicant

Within 30 days of the receipt of the decision of the department that denies, limits, or modifies the applicants request to trim or remove vegetation, or requires mitigation for the removal or trimming of vegetation, or notification that the applicant has trimmed or removed vegetation beyond the scope of their permit, the applicant may file an appeal, by written notice. The written notice of appeal shall state the specific reasons for the appeal including the specific remedy being sought, their rationale for the appeal, and any supporting documentation necessary for the department to consider their appeal. The written notice shall be sent to the Transportation Service Center (TSC) Construction Permit Agent at the TSC which provided the department's decision or notice.

TSC Permit Agent

The TSC Permit Agent shall log in the appeal and forward it along with the application file to the Region Engineer. Copies of the appeal notice shall be sent to the TSC Manager, the applicant, and the Real Estate Division Administrator within 3 days of receipt of the notice of appeal.

Region Engineer

The Region Engineer shall review the appeal file for completeness. If the Region Engineer determines that additional information is required to better understand the applicant's appeal or the TSC Permit Agent's position, the Region Engineer will make a request for additional information in writing to the applicant and the TSC Manager. Requested information will be submitted in the timeframe specified by the Region Engineer.

The Region Engineer shall convene a Region Office Review (ROR) panel of three individuals who will review the appeal and determine if the appeal should be granted, granted with modifications or limitations, or denied.

The Region Engineer shall notify the applicant of the ROR decision within 45 days of the notice of appeal being received by the department. The ROR panel may grant the applicant's appeal, grant the appeal with modifications or limitations, or deny the appeal.

Applicant

Within 30 days of receiving the decision of the panel, the applicant may request a Central Office Review (COR) of the decision of the ROR panel by notifying the Region Engineer, in writing. The written notice of appeal shall state the specific reasons for the appeal including the specific remedy being sought, their rationale for the appeal, and any supporting documentation necessary for the department to consider their appeal.

Region Engineer

Upon receipt of an appeal of the decision of the ROR, the Region Engineer shall forward the appeal along with the associated files and information to the Real Estate Division Administrator.

Real Estate Division Administrator

The Real Estate Division Administrator shall convene a panel of three individuals to review the decision of the Region Review Panel to determine if that decision should be upheld or modified. The Real Estate Division Administrator shall not be part of the panel. The Real Estate Division Administrator shall designate one of the three panel members to chair the panel. The Real Estate Division Administrator and the COR panel members shall review the appeal file to insure that all of the information necessary to respond to the issues raised in the appeal are available for review at the COR. If it is determined that additional information is needed, the Real Estate Administrator will request that the applicant or the Region Engineer supply the information. The Real Estate Division Administrator shall make available the determinations of previous COR determinations to the COR panel members.

Central Office Review Panel

The COR panel may grant the applicant's appeal, grant the appeal with modifications, or deny the appeal. The Chair of the Central Office Review Panel shall submit its decision to the Real Estate Division Administrator within 45 days of the request for Central Office Review being received by the department.

Real Estate Division Administrator

The Real Estate Division Administrator shall review the decision to ensure that all appropriate processes and timeframes have been followed. The Real Estate Division Administrator shall forward the decision of the Central Office Review Panel to the Director or his/her representative for signature. When signed by the Director or his/her representative, the decision of the Central Office Review panel shall be the final decision of the department. This process shall be completed within 15 days.

The Real Estate Division Administrator shall notify the applicant of the final decision of the department within 75 days of receiving the request for the central office review.

Applicant

Upon receiving the final decision of the department, the applicant may pursue the appeal further in a court of competent jurisdiction.

II. General Provisions

Any extension requests to exceed the durations given in this procedure whether by the applicant or the department must be approved by the Region Engineer or the Real Estate Division Administrator, as appropriate. All extensions must be requested in writing with specific justifications given for the request.

Any decision made by the department at any stage in the appeal process shall not constitute an admission of liability or set future precedent.

The ROR and COR meetings will proceed in the following format:

- Applicant presentation
- Department presentation/rebuttal
- Applicant rebuttal
- Panel questions anytime

ROR Panel Composition:

The Region Engineer will determine the ROR panel composition and sign the decision letter. The Region Engineer may or may not sit on the panel.

A ROR decision of the Region Engineer does not constitute final department action.

COR Panel Composition:

The COR panel shall consist of three department employees who have had not prior involvement in the subject application.

A department employee at a 15 level or higher will be appointed Chairperson of the COR panel.

15 level staff members – 1 to 3 depending on the panel Chairperson's determination of appeal complexity.

Other panel members with expertise in vegetation, permit, or roadside issues: 0-2 per panel based on the panel Chairperson's determination of appeal complexity.

At least one member of the panel shall be from a region and at least one shall be from the Central Office.

If the panel does not have a member with vegetation management experience, the chair shall identify a department staff member with this expertise to advise the panel on vegetation issues.

The panel Chairperson will be responsible for the written COR decision.

In emergencies, if the panel is short one member on the day of the COR, a staff member at a 14 or higher level with no involvement in the subject appeal may fill in as a substitute panel member.

The COR shall be limited to a review of the material in the appeal file, the material submitted as part of the appeal, any material provided to the Real Estate Division Administrator in writing at least 10 days prior to the COR, and the oral representations made at the COR.

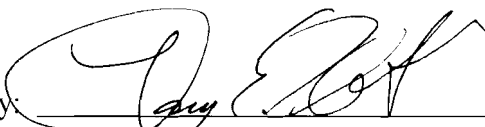
No new material may be presented at the COR hearing without approval of the panel chairperson.

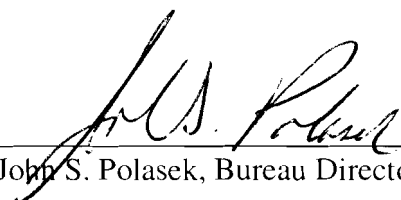
The Director's written COR decision will constitute the department's final decision regarding the appeal.

If the applicant disagrees with the Director's written COR decision, the applicant may appeal to a court of competent jurisdiction.

If the ROR or COR panel Chairperson determines that the appeal has changed or new appeal issues have been introduced, the appeal will be remanded back to step one.

The term day as used in this procedure means calendar day. Should any specified time begin or end on a Saturday, Sunday, or legal holiday, the specified time shall begin or end, as applicable, on the next business day following the Saturday, Sunday or legal holiday.

Approved by: 
Larry E. Tibbits, Chief Operations Officer
Date: Sept. 17, 2007

Approved by: 
John S. Polasek, Bureau Director
Date: 9/17/07